

Rev. 12-14-2020

The statement of scope for this rule, SS 058-21, was approved by the Governor on June 10, 2021, published in Register No. 786A3 on June 14, 2021, and approved by the Natural Resources Board on August 11, 2021. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 19.09 (4) relating to amending the list of date-regulated wild rice harvesting waters in NR 19.09(4).

WM-06-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted, Statutory Authority, and Explanation of Agency Authority:

Under Ch. 29.607, “the legal title to all wild rice growing in any lake of the state, whether meandered or not, is vested in the state for the purpose of regulation harvest, use, disposition and conservation of wild rice.” Under par. (2)(a), the secretary may designate the opening date for harvesting wild rice in navigable lakes or streams by posting notice. This is in reference to the list of waters under NR 19.09(4). Under par. (2)(b), “the department shall obtain the advice and recommendations of the tribal council before promulgating any rules governing the harvest, use and disposition of wild rice growing within the bounds of an Indian reservation.”

For several decades, the DNR has collaborated with the Ojibwe tribes to determine and post the opening dates (and closures) of lakes listed as date-regulated in NR 19.09(4). This collaboration is reiterated in Section C.7. (“Management”) of the Stipulation for Wild Rice Trial, which was approved by the federal court as part of the Voigt case: “The parties stipulate and agree to open waters for wild rice harvesting concurrently and with the consultation between the WDNR managers and the corresponding local Wild Rice Authorities listed pursuant to the Protocol.”

2. Related Statutes or Rules: There are no currently active related administrative rules.

3. Plain Language Analysis:

SECTION 1 amends the list of date-regulated wild rice harvesting waters. Forty waters are removed from the list and four new waters are added. It also amends the spelling of one lake in code.

4. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

5. If Held, Summary of Comments Received During Preliminary Comment Period

and at Public Hearing on the Statement of Scope: No preliminary public comment period was requested for this statement of scope.

6. Comparison with Similar Rules in Adjacent States:

The only other two neighboring states where northern wild rice (*Zizania paulustris*) is naturally found are Minnesota and Michigan.

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Minnesota does not designate date-regulated lakes, but the open season for all waters is between August 15 – September 30. However, some Minnesota tribes regulate specific opening dates on reservation waters. Wild rice harvesting is lawful in Michigan, but no such harvest regulations exist.

Illinois and Iowa have populations of southern wild rice (*Zizania palustris*). However, this species is seldom harvested.

7. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Since 1964, certain prominent wild rice harvesting waters have been formally regulated by a date opening through administrative rule. However, the list of date-regulated wild rice harvesting waters within the portion of Wisconsin which was ceded through the Treaties of 1836 and 1842 between the United States and Wisconsin's Ojibwe Tribes (the Ceded Territory), found in NR 19.09(4), has not changed since 1985. The purpose of date regulation has been to protect the most critical and popular wild rice waters from premature harvest and damage to the beds of wild rice, and to inform harvesters of when the resource is mature and ready for harvest. Within the Ceded Territory, wild rice is an important resource to both the state and the Ojibwe tribes, with both members and non-members participating in harvest.

Over time, changes to long-term wild rice abundance and corresponding harvest activities have occurred on certain waters. Wild rice has been completely absent or significantly diminished on several waters that are currently date-regulated under portions of NR 19.09(4) for several years. The result has been mutual agreement between Ojibwe tribes and DNR officials to completely close these waters to wild rice harvest on an annual basis. Retaining these waters as date-regulated may give some harvesters the false impression that they contain stands of rice that are large enough to make harvest a worth-while effort. By eliminating waters which no longer benefit from date-regulation from administrative code, administrative time will be saved for posting the waters and notifying the public through various communications.

8. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: These rules, and the legislation which grants the department rule-making authority, do not have fiscal effects on the private sector or small businesses. No costs to the private sector or small businesses are associated with compliance to these rules

9. Effect on Small Business (initial regulatory flexibility analysis): These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have an economic impact on a substantial number of small businesses under s. 227.24(3m), Stats.

10. Agency Contact Person: Jason Fleener, 101 South Webster Str., PO BOX 7921, Madison, WI 53707-7921. (608) 220-9023, Jason.Fleener@wisconsin.gov.

11. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Jason Fleener

Department of Natural Resources

P.O. Box 7921

Madison, WI 53707

Jason.Fleener@wisconsin.gov

608-220-9023

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608-267-7857 (fax)

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 19.09 (4) is amended to read:

(4) There is no closed season for the harvesting of wild rice in any other area of the state of Wisconsin not herein described:

~~(a) Ashland county. All waters north of highway 2 including outlying waters.~~

~~(aa) Barron county. Bear lake, Beaver Dam lake and Red Cedar lake.~~

~~(b) Bayfield county. Totogatic lake and Chippewa lake.~~

~~(c) Burnett county. Bashaw lake, Big Clam lake, Big Sand lake, Briggs lake, Gaslyn lake, Long lake, Mud lake, town of Oakland, Mud lake, town of Swiss, Mud Hen lake, Spencer lake and Trade lake.~~

~~(d) Douglas county. In Allouez Bay in the city of Superior and Mulligan lake and Minong Flowage.~~

~~(e) Forest county. Atkins lake, Riley lake, Big Riee lake and Wabigon lake Wabikon lake.~~

~~(g) Oneida county. Atkins lake, Big lake and Big lake thoroughfare, Gary lake, Little Rice lake, Riee lake and Spur lake.~~

~~(h) Polk county. Balsam Branch, Big Round lake, East lake, Glenton lake, Little Butternut lake, Nye lake, Rice lake and White Ash lake.~~

~~(i) Sawyer county. Musky Bay located in sections 10 and 11, T39N, R9W, on Big Lac Court Oreilles lake Pacwawong lake.~~

~~(j) Vilas county. Allequash lake, Little Rice lake, Nixon lake, Irving lake, Aurora lake, West Plum lake and Island lake, Devine lake, West Ellerson lake, Miehays Mud lake, Frost lake, Rice lake, Sand lake and Sugar Bush Chain.~~

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(k) *Washburn county*. ~~Bear lake, Gilmore lake, Little Mud lake, Long lake, Mud lake, Nancy lake, Rice lake, Spring lake and Tranus lake.~~

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary